– none of which conferred standing. *Id.* at 293-94. That is a far cry from alleging, as does Jordan, that he actually possesses a banned firearm or, as do Seegars, Brown and Hemphill, that they would forthwith obtain one on a judicial declaration that the law is void.

While the allegedly vague provisions at issue in *NRA v. Magaw* might have been clarified by the agency, in *PRO* "the words of the ordinance provide the sole source of guidance for firearms' owners." *PRO*, 152 F.3d at 530. While the ordinance in *PRO* was vague, the ordinance here is not – it clearly applies to plaintiffs. As the court below observed, the hazard of prosecution is worse here than it was in *PRO*. App. 14a-15a.

6. The United States argues that Ms. Hailes has no standing because it is only speculative that her house will be broken into again, that her life will be threatened, and that she will need to remove the trigger lock from and load her shotgun. Opposition 12-14. Nor does the United States anticipate that she may need to make her shotgun ready if she hears suspicious noises or otherwise reasonably fears an unlawful intrusion.

In matters of security, the United States itself does not take such a carefree attitude. From its building guards and law enforcement agents to air marshals and soldiers, being armed even when no specific threat exists is considered prudent. To dismiss the plight of the lowly homeowner in a crime-ridden neighborhood by depicting such person's legitimate fears as based on "speculation" is unseemly.

Whitmore v. Arkansas, 495 U.S. 149 (1990), does not support the government's position. It held that one death row inmate does not have standing to file a habeas corpus petition on behalf of a second, unrelated death row inmate. The heinous murder in that case is a stark reminder that persons are entitled to take measures to defend themselves against criminal

aggression.[8] This is a prudent, personal choice plaintiffs claim on their own behalf, not on behalf of unrelated third parties.

Indeed, *Whitmore*, *id.* at 158-59, reaffirmed *United States v. SCRAP*, 412 U.S. 669, 678 (1973), which upheld standing for "economic, recreational and aesthetic harm" to students which would allegedly be caused by an increase in use of nonrecyclable commodities. Surely petitioners' interest in protecting their lives fr m criminal violence without being prosecuted and imprisoned for doing so is more substantial than the interests at stake in *SCRAP*.

Texas v. United States, 523 U.S. 296, 300 (1998), involved various contingencies which may never occur. *See id.* at 301 ("Texas is not required to engage in, or to refrain from, any conduct, unless and until it chooses to implement one of the noncleared remedies."). Here, plaintiffs – under pain of imprisonment – are required to refrain from conduct which they deem prudent and necessary to protect their lives.

The United States surmises that it is speculative that Hailes would be prosecuted if caught. Opposition 13, citing *Blanchette v. Conn. General Insurance Corp.*, 419 U.S. 102, 143 n.29 (1974). But *Blanchette* held that "[o]ne does not have to await the consummation of threatened injury to obtain preventive relief." *Id.* at 143.

It is no defense to the prohibition that a person is a crime victim seeking to protect herself from attack. *Cf.* Opposition 13-14, citing *Wilson v. United States*, 198 F.2d 299, 300 (D.C. Cir. 1952). Recent case law makes clear that any such defense is extremely limited. *Yoon v. United States*, 594 A.2d 1056, 1057, 1064 n.16 (D.C. 1991) (upholding conviction

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[8] *See id.* at 157 (the "victim died after he stabbed her 10 times, cut her throat, and carved an 'X' on the side of her face").

of market owner who was repeatedly robbed and shot at). Ms. Hailes seeks to remove such uncertainties, which is the very aim of the Declaratory Judgment Act:

> Assuming that the plaintiff has a vital interest in the enforcement of the challenged statute or ordinance, there is no reason why a declaratory judgment should not be issued, instead of compelling a violation of the statute as a condition precedent to challenging its constitutionality.

Steffel, 415 U.S. at 468 n.18 (citation omitted).

The constricted standing rule advocated by the United States is for reckless people willing to violate the law and take their chances. It is not for prudent people who seek to order their lives to comply with the law in event of irreversible, life-threatening contingencies. As Judge Williams noted about Ms. Hailes: "The risk of prosecution in the event of the contingency she fears is high, and thus the resulting deterrent to her freeing the trigger lock is effectively as great as if she proposed to violate the law down at the police station." (App. 29a)

CONCLUSION

The petition for a writ of certiorari should be granted.

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